

CONCHO PETROLEUM COMPANY
AND
J. C. KARCHER

IBLA 75-406

Decided September 26, 1975

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting application for modification of coal lease W-0220516.

Affirmed.

1. Coal Leases and Permits: Leases

Under 43 CFR 3524.2-1, an application to modify a coal lease without competitive bidding, to include contiguous coal deposits, will be denied if the additional lands requested can be developed as part of an independent operation or there is a competitive interest in them.

2. Administrative Procedure: Hearings -- Rules of Practice: Appeals: Hearings

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

APPEARANCES: Bill Womble, Esq., Lyne, Klein, French & Womble, Dallas, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Concho Petroleum Company and J. C. Karcher appeal from a decision of the Wyoming State Office, Bureau of Land Management, issued February 26, 1975, rejecting appellants' application for modification of its coal lease.

In the request for modification, filed July 11, 1974, appellants explained that it would be to the advantage of the lessees

and the United States to modify the lease to include additional lands comprising 1,121.52 acres, which would consolidate the two separated tracts presently under this lease to provide for a more workable mining unit. Coal deposits under the southwest and northwest corners of Tract No. 1 would thereby be made accessible.

Appellants stated that they anticipate active development of these properties and that major energy companies have indicated their definite interest in using this area for establishing a plant. Appellants explained how the proximity to water supply and rail and highway transportation makes the area adaptable for use by either producers of electrical power or manufacturers of gas and gasoline.

The Geological Survey and State Office assumed that appellants request their lease be modified noncompetitively. 1/ The State Office denied the request as follows:

A report was requested from the U.S. Geological Survey. The Geological Survey recommended that the application be rejected because of the "large reserves of potentially strippable coal in the lands under application which could be independently developed."

The application for modification of coal lease W-0220516 is hereby rejected without prejudice to your right to file for a competitive lease on the subject lands.
[2/]

In their statement of reasons, appellants submit that the irregular configuration of the acreage covered by the subject lease prevents coal deposits underlying the present lease from qualifying as an economically feasible workable mining unit. Exploratory drilling on the lease indicates that there are coal deposits under the lease approximately 52 feet and 73 feet in depth. Appellants submit that the requested lease modification is required to permit the mining of the entire acreage involved as an economical mining unit. It is alleged that without the modification, substantial coal deposits will be wholly unminable due to the fact that the lateral support required for the wall of the mine will encroach on and over such deposits and preclude extraction thereof. Appellant explains:

1/ This assumption was not questioned on appeal.

2/ The decision also noted that no effect would be given to the partial relinquishment of the lease, which appellants had made conditional upon approval of the modification.

Accordingly, in the absence of approval of the modification request, the acreage contained in Tract No. 2 depicted on Exhibit "A" (the acreage on the eastern side of the Lease) will remain completely separated from the acreage in Tract 1 and a substantial portion of the coal deposits underlying this Tract 2 will thereby be made inaccessible to either open pit or strip mining of the acreage. In addition, in the absence of approval of the modification request, the coal deposits underlying the acreage in the Southwest corner and Northwest corner, respectively, of Tract No. 1 under the Lease will also be substantially inaccessible by virtue of the 90 degree angles of the boundary lines of the Lease. With the modification, the boundary lines of the Lease will be squared and allow for much more efficient mining of the entire tract.

In the alternative, if the Board decides not to grant the modification as to all the acreage sought, but decides to grant modification in part, appellant submits that the application for modification should be granted with respect to the strip of unleased land containing 481.52 acres of land between the two tracts of leased land. This would enable the two separate tracts now comprising the lease to be consolidated to complete the lease as a workable mining unit.

Appellants request a hearing to present evidence with reference to the economic feasibility of and the specific need for the requested modification to qualify the acreage underlying the subject lease as a workable mining unit. Appellants also request oral argument before the Board.

[1] Departmental regulation 43 CFR 3524.2-1 provides that under section 3 of the Act of February 25, 1920, 30 U.S.C. § 203 (1970), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States. Part (a)(2) of this regulation reads as follows:

(2) Availability -- (i) Noncompetitive. Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(ii) Competitive. If however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in [competitive bidding] subpart 3520.

An application to modify a coal lease to noncompetitively include additional contiguous coal deposits will be denied if the additional lands can be developed independently or if there is a competitive interest in them. Western Slope Carbon, Inc., 5 IBLA 311 (1972). Appellants have not alleged that the area proposed to be included cannot be developed as part of an independent operation. In the absence of any clear and definite showing that the determination of the Geological Survey as to independent development was not properly made, the determination will not be disturbed. McClure Oil Company, 4 IBLA 255 (1972). Therefore, appellants' allegation that additional lands are necessary to consolidate the separated tracts to provide for a more workable mining unit is not determinative under the regulation. Intermountain Exploration Company, 17 IBLA 261, 81 I.D. 602 (1974).

[2] As to appellants' request for hearing before the Board, there is no factual dispute and the determination rests on legal conclusions based on such facts. The Board also concludes that the granting of appellants' request for oral argument would serve no useful purpose. Therefore, the requests are denied. Thomas A. Reeder, 9 IBLA 56 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed. 3/

Joseph W. Goss
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Martin Ritvo
Administrative Judge

3/ As the State Office commented, appellants may file for a competitive lease for any or all of the lands.

